



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 03929-99
11 February 2000

CDR [REDACTED] USN
[REDACTED]

Dear Commande [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 16 November 1999, a copy of which is attached. The Board also considered your counsel's letter dated 24 January 2000 with enclosure.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. They noted that your counsel acknowledges you did have a "perception problem," corrected by seeking professional assistance. They found nothing objectionable in the reporting senior's comment on this. The reporting senior's letter of 8 January 1999 did not persuade them that he evaluated you incorrectly in the contested original fitness report. Since the Board found no defect in your performance record, they had no basis to remove your failures of selection to captain. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

While the Board voted against entering the supplemental fitness report in your record, they noted you may, if you wish, submit this report and the reporting senior's letter of 8 January 1999 to future selection boards.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

Copy to:
Joseph W. Kastl, Esq.



3929-99

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1611
PERS-311
16 November 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: CDE [REDACTED] A USN [REDACTED]

Ref: (a) BUPERSINST 1611.17 FITREP Manual of 10 June 1993

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 September 1993 to 31 August 1994 and replace it with a supplemental report for the same period.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. The revised or supplemental report the member desires to replace the original report with is not on file in the member's headquarters record.

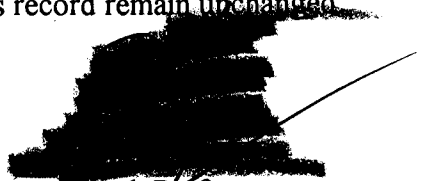
b. A copy of the supplemental report is included with the member's petition; however, per reference (a), Chapter 13, paragraph 13-3, supplemental material must be submitted within two years of the ending date of the report and be accompanied by a cover letter stating the changes and reason for evaluation. In this case, it has been over five years.

c. The fitness report has been in Command [REDACTED] record for over five years. If the member felt the report was unjust or in error he could have submitted a statement for inclusion in his record. He has provided no explanation for failing to make reasonable efforts to correct the errors before now.

d. It is clear that the sole reason for the petition is the member's failure of selection [REDACTED]. [REDACTED] also states in his cover letter to the supplemental report that he has submitted the supplemental report because [REDACTED] failure of selection. It has long been our position that failure of selection is not sufficient reason to remove a fitness report or supplementary material.

e. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

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Head, Performance
Evaluation Branch